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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 43

THE UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM L. HUTCHESON ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 17–22) is reported in 32 F. Supp. 600.

JURISDICTION

The order of the court below dismissing the indictment was entered on April 1, 1940 (R. 22). On the same day an order allowing appeal was entered (R. 25–26). On April 29, 1940, this Court noted probable jurisdiction. The jurisdiction of this Court is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246, as amended, 18 U. S. C.,

§ 682, otherwise known as the Criminal Appeals Act, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTES INVOLVED

The statute primarily involved is Section 1 of the Sherman Act, as amended (c. 647, 26 Stat. 209, 15 U. S. C., § 1), which is printed in the Appendix, *infra,* pp. 66–67. In construing the Sherman Act the court below also considered Sections 6 and 20 of the Clayton Act, as amended (c. 323, 38 Stat. 730, 15 U. S. C., §§ 17, 31), and the Norris-La-Guardia Act (c. 90, 47 Stat. 70, 29 U. S. C., §§ 101–115). These statutory provisions are also set forth in the Appendix, *infra,* pp. 67–72.

QUESTION PRESENTED

Whether the acts charged in the indictment are violations of Section 1 of the Sherman Act.

STATEMENT

On November 3, 1939, the appellees (hereinafter referred to as "the defendants") were indicted in the United States District Court for the Eastern District of Missouri, Eastern Division (R. 1–12), for having combined and conspired to restrain interstate commerce in violation of Section 1 of the Sherman Act. The defendants filed separate demurrers to the indictment (R. 13–16), which were sustained by the District Court on March 29, 1940 (R. 17).

A. THE ALLEGATIONS OF THE INDICTMENT

The pertinent allegations of the indictment are summarized below:

Description of the defendants and of the organizations with which they are affiliated.—The defendants are William L. Hutcheson, George Casper Ottens, John A. Callahan, and Joseph August Klein. William L. Hutcheson is general president of the United Brotherhood of Carpenters and Joiners of America (hereinafter referred to as "the Brotherhood of Carpenters"), a trade-union of carpenters and other craftsmen, including millwrights. George Casper Ottens is a general representative of the United Brotherhood of Carpenters. John A. Callahan was, until about August 15, 1939, secretary of the Carpenters District Council of St. Louis, which represented nine local unions of the Brotherhood of Carpenters in that area. Joseph August Klein was the business representative of the Carpenters District Council. (R. 1.)

Description of the trade and commerce involved.—The defendants are charged with having restrained interstate trade and commerce carried on by Anheuser-Busch, Inc., Borsari Tank Corporation, The Gaylord Container Corporation, and L. O. Stocker Company.

Anheuser-Busch, Inc., operates a large brewery and manufacturing plant in St. Louis, Missouri. In order to manufacture beer in St. Louis it purchases and causes to be shipped in interstate com-

merce barley and barley malt, rice, and hops from other states. The beer so manufactured is shipped by Anheuser-Busch in interstate commerce all over the United States. (R. 2–3.)

In addition to the grains which are made into beer, Anheuser-Busch annually purchases large quantities of copper tubing, sheet copper, compressor units, cork, tanks, valves, grills, and wire screens in states other than Missouri. These commodities are shipped in interstate commerce to the Anheuser-Busch plant in St. Louis where they are used with other materials to manufacture ice-cream cabinets which Anheuser-Busch ships in interstate commerce to every state in the union. (R. 3.)

Each year, from 1935 to 1938, Anheuser-Busch has expanded its productive capacity by constructing additional buildings in St. Louis containing fermentation tanks. Each of these buildings was built for Anheuser-Busch by Borsari Tank Corporation, an independent corporation specializing in tank-building construction. In the construction of these tank buildings, the Borsari Tank Corporation used large quantities of building materials which were shipped in interstate commerce into the State of Missouri. In 1939, Anheuser-Busch contracted with the Borsari Tank Corporation to construct an additional tank building at a cost of approximately $500,000. Pursuant to that contract, the Borsari Tank Corporation contracted for

and intended to have large quantities of building materials shipped in interstate commerce directly to the site of the Anheuser-Busch brewery. (R. 3–4.)

The Gaylord Container Corporation manufactures paper boxes, cardboard containers, and other articles in many states, including Missouri, and makes substantial sales and shipments of these articles in interstate commerce. It leases from Anheuser-Busch premises adjacent to the Anheuser-Busch brewery in St. Louis. On August 1, 1939, the Gaylord Container Corporation contracted with L. O. Stocker Company, a general building contractor in St. Louis, for the construction of an additional office building on these leased premises costing about $70,000. For its use in performing this construction contract, L. O. Stocker Company contracted to purchase large quantities of structural steel and other building materials which were to have been shipped in interstate commerce directly to the building site in St. Louis. (R. 4.)

The background of the combination and conspiracy.—The combination and conspiracy charged in the indictment did not grow out of any dispute between Anheuser-Busch and the union labor involved, but out of a jurisdictional controversy between two rival unions—the Brotherhood of Carpenters and the International Association of Machinists (hereinafter referred to as "the Machinists' Union"). Both unions are affiliated with the American Federation of Labor (R. 2). The

Brotherhood of Carpenters has claimed for many years that only its members and no one else is entitled to erect and dismantle all kinds of machinery, both metal and wooden. The International Association of Machinists insisted on the right of its members to work on machinery. The Brotherhood of Carpenters has called strikes at "divers times and places" for the sole purpose of preventing members of the Machinists' Union from erecting and dismantling machinery. To settle this dispute and stop these strikes, the defendant Hutcheson, as general president of the Brotherhood of Carpenters, concluded an agreement on October 24, 1932, with the Machinists' Union. On April 14, 1933, however, the defendant Hutcheson and the secretary of the Brotherhood of Carpenters repudiated their agreement. Thereafter jurisdictional strikes began all over again and up to the time of this indictment continued to impose a direct and unreasonable burden and restraint upon trade and commerce among the several states. (R. 5.)

Anheuser-Busch unwillingly became involved in this jurisdictional warfare in the following way: In June 1939 it was employing in St. Louis about 78 members of the Brotherhood of Carpenters and 80 members of the Machinists' Union. The company had separate written agreements with each of these unions, prescribing wages, hours of labor, and other conditions of employment, which were

substantially the same for both unions. The Anheuser-Busch agreement with the Machinists' Union, following the settlement between the unions themselves in 1933, provided that the machinists should do "the erecting, assembling, installing, and repairing of all metal machinery or parts thereof." The agreement with the Brotherhood of Carpenters provided that "the work to be done by the members of the union under this contract, shall be as, when, and where determined and designated by the employer," and further expressly stipulated that any grievances, not adjusted by a conference with a shop steward or a foreman, should be submitted to arbitration and that no employee should strike because of any grievance until these remedies had been exhausted. (R. 6.)

On a number of occasions between October 24, 1933, and November 3, 1939, the defendants Klein, Callahan, and Ottens, acting under the direction of the defendant Hutcheson, and purporting to represent the Carpenters District Council of St. Louis and the Brotherhood of Carpenters, demanded that Anheuser-Busch violate its agreement with the Machinists' Union and employ members of the carpenters' union instead of machinists to erect, assemble, and install all machinery in its plant (R. 6–7). This demand was made with the knowledge that Anheuser-Busch had agreed with the Machinists' Union that its members should erect, assemble, install, and repair all metal ma-

chinery (R. 8). Anheuser-Busch requested over and over again that the defendants live up to their contract and submit the dispute to arbitration. Representatives of the Machinists' Union made the same request. The defendants, however, refused to arbitrate. (R. 9–10.) Instead they delivered an ultimatum and thereafter began the combination and conspiracy described in the indictment to compel Anheuser-Busch by the threats of boycotts and strikes to comply with their demands (R. 9).

At no time during the period covered by the conspiracy was there any dispute between Anheuser-Busch and the members of the Brotherhood of Carpenters concerning the terms and conditions of their employment (R. 8).

The combination and conspiracy.—The defendants are charged with having knowingly, willfully, and unlawfully combined in a conspiracy in restraint of trade and commerce among the several states in violation of Section 1 of the Sherman Act, and particularly (R. 7):

> 1. In restraint of the flow into Missouri of commodities and materials intended for use (a) by Anheuser-Busch in the brewing of beer and the manufacture of ice-cream cabinets, (b) by Borsari Tank Corporation in the construction of tank buildings for Anheuser-Busch, and (c) by L. O. Stocker Company in the construction of a building for the Gaylord Container Corporation;
>
> 2. In restraint of the flow from Missouri to other states of beer brewed by Anheuser-

Busch and ice-cream cabinets manufactured by Anheuser-Busch; and

3. In restraint generally of the interstate trade and commerce of Anheuser-Busch, Borsari Tank Corporation, the Gaylord Container Corporation, and L. O. Stocker Company.

It is specifically charged that the defendants Ottens, Callahan, and Klein, under the direction and approval of the defendant Hutcheson, notified Anheuser-Busch on or shortly before June 28, 1939, that unless it would agree to employ members of the Brotherhood of Carpenters exclusively for the work of erecting, assembling, and installing all machinery in the St. Louis brewery, they would (a) call a strike of all millwrights, carpenters, and cabinet makers in the employ of Anheuser-Busch, (b) instigate a sympathy strike against Anheuser-Busch by all its employees who were members of any American Federation of Labor affiliated unions, and (c) prevent not only all members of the Brotherhood of Carpenters but also members of other building trades unions affiliated with the American Federation of Labor from working for independent contractors on the construction of buildings for Anheuser-Busch, including the tank building contracted to be constructed by Borsari Tank Corporation (R. 9).

Pursuant to and in furtherance of this conspiracy, the defendants (a) called a strike of the millwrights, carpenters, and cabinet makers employed

by Anheuser Busch, (b) attempted to instigate sympathy strikes among employees of Anheuser-Busch, who were members of other unions, and (c) picketed the premises of Anheuser-Busch and the adjoining premises of the Gaylord Container Corporation. All of these steps were taken (R. 10):

> *with intent to shut* down the brewery and manufacturing plant of Anheuser-Busch, Inc., *to hinder and prevent* the passage of persons and property to and from said premises, and thus *to restrain and stop the commerce* of Anheuser-Busch, Inc., * * *, and to restrain the commerce of Gaylord Container Corporation * * *. [Italics supplied.]

Pursuant to and in furtherance of the conspiracy the defendants also (R. 10):

> instigated, promoted, and brought about a boycott of beer brewed by Anheuser-Busch, Inc., and of dealers in said beer throughout the United States, by distributing printed circulars and sending letters to local unions, councils, and individual members of United Brotherhood of Carpenters and Joiners of America and of other trade and labor unions affiliated with American Federation of Labor and to Members of the public at large in many of the states, and by publishing notices in "The Carpenter," an official periodical publication of United Brotherhood of Carpenters and Joiners of America, circulated in all of the states of the United States,

> denouncing Anheuser-Busch, Inc., as unfair to organized labor and calling upon all union members and friends of organized labor to refrain from purchasing and drinking said beer, *all with the intent and effect of restraining* and stopping the commerce therein * * *. [Italics supplied.]

Pursuant to and in furtherance of this conspiracy, the defendants refused to permit members of the Brotherhood of Carpenters to work for Borsari Tank Corporation with the intent and effect of preventing the construction of the tank building for Anheuser-Busch, thus restraining the commerce of Anheuser-Busch in beer. This was done with knowledge and wilful disregard of the consequent restraint and stoppage of commerce in the materials intended to be used for the construction of the tank building. (R. 10–11.)

Pursuant to and in furtherance of the conspiracy, the defendants also prevented L. O. Stocker Company from employing members of the Brotherhood of Carpenters, with the intent and effect of preventing that company from performing its contract with Gaylord Container Corporation for the construction of an additional office building. This was done with knowledge and wilful disregard of the consequent restraint and stoppage of commerce in the materials intended to be used for the construction of that building. (R. 11.)

B. THE DECISION OF THE COURT BELOW

The separate demurrers filed by the defendants were identical in form and alleged generally that the indictment did not plead facts which constitute an offense under the laws of the United States (R. 13–16).

In sustaining the demurrers, the District Court did not hold the indictment defective as a pleading; it sustained the demurrers on the ground that the acts charged were not crimes within the meaning of the Sherman Act. The opinion assigned different grounds of invalidity to different allegations of the indictment. Thus the court held that the allegations charging the defendants with picketing the premises of Anheuser-Busch and of Gaylord Container Corporation, and with refusing to allow the members of the union to be employed by the Borsari Tank Corporation and L. O. Stocker Company, when considered separately, did not allege a conspiracy "to directly restrain interstate commerce" within the meaning of the Sherman Act. (R. 19.) The court further held that, although the allegations of the indictment with respect to the nationwide boycott of Anheuser-Busch beer and dealers in that beer did set forth an attempt to interfere with interstate commerce in that product (R. 20), the boycott was not illegal under the Sherman Act because "labor unions engaging in jurisdictional strikes are immune from suit in the Federal courts so long as lawful means are

employed under the provisions of the Norris-LaGuardia Act" (R. 20).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

(1) In holding that the indictment does not allege sufficient facts to show a conspiracy in restraint of interstate trade and commerce within the meaning of the Sherman Act.

(2) In holding that the allegations in the indictment concerning the activities of the defendants in picketing the premises of Anheuser-Busch, Inc., and Gaylord Container Corporation, as well as the refusal to allow their members to be employed by Bosari Tank Corporation and L. O. Stocker Co., failed to allege a conspiracy in direct restraint of interstate commerce.

(3) In holding that the real purpose of the defendants, as disclosed by the indictment, was not to restrain commerce but to prevail in a local labor controversy.

(4) In holding that allegations relating to the boycott of Anheuser-Busch beer did not set forth an illegal conspiracy under the Sherman Act because the defendants did not employ unlawful means or attempt an unlawful purpose.

(5) In holding that the Norris-LaGuardia Act so modifies the Sherman Act as to make immune from suit labor unions employing lawful means to conduct jurisdictional strikes.

(6) In separating the various means and methods described in the indictment into two categories and in holding that the indictment did not charge a conspiracy within the Sherman Act because some of the allegations did not allege a direct restraint on interstate commerce and because the others, although alleging a direct restraint on interstate commerce, did not show an unlawful purpose.

(7) In sustaining the demurrers and dismissing the indictment.

SUMMARY OF ARGUMENT

Under the rule in *United States* v. *Borden Co.*, 308 U. S. 188, the present appeal presents for review two questions of law: (1) does the indictment charge a "direct" restraint on interstate commerce, and (2) are labor unions engaged in jurisdictional strikes immune from prosecution if in furtherance thereof they combine to do the acts charged in the indictment. These two questions of law can most conveniently be discussed under four headings: (1) that the indictment charges a direct and intentional restraint of interstate commerce; (2) that it charges the kind of restraint which is illegal under the Sherman Act; (3) that it charges an unreasonable restraint under the Sherman Act; and (4) that the Norris-LaGuardia Act has not modified or amended the Sherman Act so

as to prevent prosecution of the conspiracy charged in the indictment.

I

The indictment charges a direct physical restraint of interstate commerce in goods manufactured and sold by Anheuser-Busch, in goods manufactured and sold by the Gaylord Container Corporation, in building materials intended for Anheuser-Busch, Bosari Tank Corporation, L. O. Stocker Co., and Gaylord Container Corporation, and in materials purchased by Anheuser-Busch for the production of its goods. It further alleges that the defendants had the purpose and intent to restrain this interstate commerce. These allegations are clearly sufficient to show a direct and deliberate restraint of interstate trade.

Certainly if the competitors of Anheuser-Busch had combined to prevent it from shipping raw materials and beer in interstate commerce, to instigate strikes in its plant, and to boycott and interfere with the interstate commerce of persons who had dealings with Anheuser-Busch, their activities could not be described as affecting interstate commerce only incidentally and indirectly. The fact that the defendants are officers of a labor union and not competitors is immaterial; for the purpose of determining whether interstate commerce has been directly and intentionally restrained, the test is the same in both situations.

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II

The indictment also charges the kind of restraint which is illegal under the Sherman Act.

In *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, this Court held that a labor union, in the course of a labor dispute with an employer over such issues as collective bargaining, wages, hours, or conditions of labor, can, without violating the Sherman Act, conduct a local strike whch closes a factory, even though this prevents the shipment of goods in interstate commerce. The conspiracy charged in the present indictment is, however, radically different.

In the first place there is here no mere local dispute between an employer and his employees, and the acts charged to the defendants are not merely local activities conducted in a single factory and subject to the supervision and control of the local authorities. The indictment in this case charges rather that a restraint of trade has been imposed as a result of a jurisdictional dispute between two national unions and that this dispute has resulted in many different strikes in many different places which have imposed a direct and unreasonable burden upon interstate trade. It further charges that the defendants sought to force Anheuser-Busch to take its side in this dispute and, when Anheuser-Busch refused, that they engaged in a deliberate campaign on a national scale to drive Anheuser-Busch from the interstate market. Defendants'

activities in this campaign were in no sense local in character and they were not subject to the control of the local authorities.

In the second place, the objective of the conspiracy was not the protection and advancement of the rights of labor, such as collective bargaining, wages, hours, or working conditions; it was rather to win by force a jurisdictional dispute with another union and to deprive the members of that other union of work. Defendants attempted to destroy the interstate business of Anheuser-Busch, and to restrain the interstate trade of the other companies, because they hoped by these methods to compel Anheuser-Busch to side with them in the jurisdictional dispute. The holding in the *Apex* case that a union may stop production in a local factory in order to achieve union recognition is not authority for a similar holding when the objective of the union is to win by force a nation-wide contest, not with the employer, but with another union.

In the third place, the objective of the union in this case was sought to be achieved not, as in the *Apex* case, by interfering with the business of the other party to the dispute, but by stopping interstate trade to or by four companies, with only one of which it had any relation and against none of which it had any real grievance. The purpose of the defendants in restraining the interstate commerce of Anheuser-Busch was to compel it to become a partisan in the fight between the Brother-

hood of Carpenters and the Machinists' Union. The purpose of the defendants in restraining the interstate commerce of the other companies was to compel them to put pressure on Anheuser-Busch to become a partisan in the jurisdictional dispute. This aspect of the defendants' activities indicates an intent and purpose to interfere with interstate commerce on a far broader scale than the closing of one local plant; it raises a question quite distinct from that in the *Apex* case, where all the activities of the union were directed to stopping the operation of the employer's plant alone.

The opinion in the *Apex* case recognizes that the type of restraint charged to the defendants in this case, because it actually and potentially interferes with competitors in every direction, is within the prohibitions of the Sherman Act. The test laid down in that case is whether the restraint is "upon commercial competition in the marketing of goods or services". The mere closing of a factory is not enough to bring the case within that test. But if, as in this case, the restraints go beyond that and are directed toward driving an employer, against whom the union has no real grievance, from the interstate market and to interfere with the interstate commerce of persons dealing with the employer, the application of the Sherman Act is clear.

In *Loewe* v. *Lawlor*, 208 U. S. 274, *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters'*

Ass'n, 274 U. S. 37, this Court held that activities similar in all important respects to the activities of the defendants here restrained commerce within the meaning of the Sherman Act. Unless this Court is now prepared to overrule those decisions, the decision below must be reversed.

But even if the Court should deem that those earlier decisions no longer have vitality, it would still not follow that the indictment here charges a restraint which is beyond the scope of the Sherman Act. The purpose and intent of defendants' activities were to exclude Anheuser-Busch from the interstate market. The exclusion of a trader from the market, or the erection of arbitrary barriers to free access to the market, has long been recognized both under the Sherman Act and the common law as a restraint of trade. While the greater number of the decisions of this Court interpreting and applying the Sherman Act have involved arrangements designed to limit production or to fix prices, this Court has in a number of cases struck down restraints, not because of their effect upon prices or production, but because they operated to destroy free access to the market.

III

A cursory examination of the character and consequences of jurisdictional strikes makes it apparent that the restraint charged in the indictment may not be justified under the "rule of reason"

enunciated in *Standard Oil Co.* v. *United States*, 221 U. S. 1.

There is no form of labor warfare so opposed to the public interest and to the interest of organized labor itself as the jurisdictional strike which stops the commerce of an employer who is trying to be fair to organized labor. An employer who finds himself the victim of such a strike is powerless to remedy the situation. There is no concession he can make which will stop the attack on his business. Similarly, the union whose relations with the employer the other union seeks to disrupt cannot rely on its satisfactory service or its superior craftsmanship to maintain its position; it has no weapon, other than ruthless economic warfare, to defend itself against the aggressive tactics of those who would destroy it.

If unions grow with the efficiency and ability of their leaders to gain advantages for labor, good union leadership may be expected. But if a union is permitted to expand through the mere brutal use of power against neutral employers, there will be a premium on ruthless and coercive leadership. Consequently it is essential to the growth of an intelligent labor movement that competing unions should not succeed or fail solely with reference to their ability to bring pressure against each other. If, as this Court has said, the Sherman Act is a charter of freedom, it must include within its prohibitions the destruction of one labor organization

by another through force and coercion at the expense of innocent bystanders and the tying up of the business of the public at large.

IV

The court below erred in holding that the Norris-LaGuardia Act modified or amended Section 1 of the Sherman Act so as to make lawful thereunder activities which might otherwise be illegal. The Norris-LaGuardia Act does nothing more than limit the equity powers of the federal courts. It affords no ground for construing the Sherman Act as inapplicable to the acts charged in the indictment.

ARGUMENT

I

THE SCOPE OF THE ISSUES ON THIS APPEAL

The rule which limits the jurisdiction of this Court under the Criminal Appeals Act was stated in *United States* v. *Borden Co.*, 308 U. S. 188, 207, in these words:

> For it is well settled that where the District Court has based its decision on a particular construction of the underlying statute, the review here under the Criminal Appeals Act is confined to the question of the propriety of that construction.

Under this rule we conceive that the Court has before it two questions of law: (1) Does the indictment charge a "direct" restraint of interstate

commerce; and (2) Are labor unions, engaged in jurisdictional strikes, immune from prosecution if, in furtherance thereof, they combine to do the acts charged in the indictment?

A. All of the allegations of the indictment must be considered.—It is important to point this out because the court below separated the various means and methods described in the indictment into two categories and pursued a different line of reasoning as to each of them. The first category concerned the allegations as to strikes and picketing against Anheuser-Busch, Gaylord Container Corporation, and L. O. Stocker Company. These particular allegations, the court held, did not allege a "direct" restraint on interstate commerce (R. 19). The second category concerned the allegations as to the nation-wide boycott of Anheuser-Busch beer and of dealers in that beer. These allegations, the court held, did charge an attempt to interfere directly with interstate commerce, but, nevertheless, were not unlawful because the purpose of the conspiracy—the conduct of a jurisdictional controversy—made it immune from prosecution when carried out by lawful means (R. 20–21).

In reviewing the construction of the lower court that the indictment does not charge a conspiracy to impose a direct restraint on interstate commerce, this Court must consider *all* of the allegations and not merely those which relate to strikes and picket-

ing. Similarly, in considering whether the acts charged are immune from prosecution because they are in furtherance of a jurisdictional demand, the court is free to examine all of the means used to further that demand and not simply the boycott selected by the court below. A rule requiring this Court to review the construction of the court below in relation to only those parts of the indictment which it happened to select, and without reference to the whole indictment, would be, in effect, to rewrite the indictment by splitting it up into a number of conspiracies when only one was charged. In addition, an indictment for conspiracy is, of course, good if any one of the means and methods charged shows the commission of the offense; it is not necessary that all of the means and methods be criminal. Therefore, an appellate review which decided on the criminality of the methods used to further a conspiracy one at a time would compel a series of appeals on the same indictment.

B. The scope of the first question to be reviewed. The question is: Does the indictment charge a direct restraint of interstate commerce? That question may be divided into two parts.

(a) Is the amount of interstate commerce restrained sufficient to come within the purview of federal power, and

(b) Does the *purpose* of the conspiracy make that restraint remote or incidental to the objectives of the Sherman Act?

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The first part (a) of this question obviously must be reviewed here. The second part (b) requires an explanatory comment.

When the District Court based its decision in part upon the ground that the indictment did not "allege a conspiracy to directly restrain interstate commerce" (R. 19), it is quite clear that the court realized that interstate commerce had been restrained in some degree. It refers to this restraint as "incidental." It is clear from the opinion that the *reason* the court felt this restraint to be incidental was because the purpose of the defendants made it a kind of restraint not prohibited by the Sherman Act. In reviewing this conclusion by the lower court, it is necessary to consider the doctrine relating to the kinds of restraints prohibited by the Sherman Act laid down in *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, insofar as it applies to the indictment in this case.

C. The scope of the second question to be reviewed.—The second question is: Are labor unions, engaged in jurisdictional strikes, immune from prosecution if in furtherance thereof they do the acts charged in the indictment?

It would be possible to argue that this second question was narrower than the above statement indicates because the court gave as its reason that the Norris-LaGuardia Act had changed the law so as to prevent prosecution. From this it might be contended that the only reviewable issue was the effect of the Norris-LaGuardia Act on the charges

of the indictment. Such a construction of the scope of the review in this case seems too narrow to be workable. It would mean, for example, that if the Norris-LaGuardia Act constituted no reason for immunity from these particular charges, but, nevertheless, the union was immune for some reason stated in the recent *Apex* case, the lower court would have to be reversed because of an incorrect reason given for a correct construction of the Sherman Act. We do not believe that this is what the rule in the *Borden* case means. We consider that the question of construction of the Sherman Act, which this Court is empowered to review, is whether jurisdictional strikes enforced by the means charged in the indictment are immune from prosecution. That was the conclusion of the court below, and we do not believe that this Court is confined to the logical analysis made by the court below in reaching that conclusion. If it were confined to that analysis, the final determination of a case like this might require a series of separate appeals, each of which condemned some wrong reason for a right result, until by a process of elimination the court below finally hit upon the correct reason for its construction of the Act. It is impossible to believe that the Criminal Appeals Act contemplated any such unworkable, piecemeal review as that.

The situation is analogous to a case where the lower court dismisses an indictment because the statute on which it is based is invalid. It is settled

that in such circumstances an appeal under the Criminal Appeals Act opens for review any reason, whether or not it was the one selected by the court below, which would sustain its ruling. *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304.

The questions open to review in this case can most conveniently be discussed under four headings: (1) that the indictment charges a direct and intentional physical restraint of interstate commerce within the meaning of the Sherman Act; (2) that it charges the kind of restraint which is illegal under the Sherman Act; (3) that it charges an unreasonable restraint under the Sherman Act; and (4) that the Norris-LaGuardia Act has not modified or amended the Sherman Act so as to prevent the prosecution of the conspiracy charged in the indictment.

II

THE INDICTMENT CHARGES A DIRECT AND INTENTIONAL RESTRAINT OF INTERSTATE COMMERCE WITHIN THE MEANING OF THE SHERMAN ACT

The indictment charges the defendants with having conspired to restrain interstate commerce (R. 7–8):

> (1) in building materials intended for Anheuser-Busch, Borsari, Stocker and Gaylord;
>
> (2) in malt, hops, barley, rice, compressor units, copper tubing, sheet copper, cork, Cop-R-Loy tanks, valves, grills, and wire

screens purchased by Anheuser-Busch and shipped into Missouri from other states;

(3) in beer and ice-cream cabinets manufactured by Anheuser-Busch for shipment from Missouri into the several states; and

(4) in paper products manufactured by Gaylord for shipment out of Missouri.

No doubt can exist as to the interstate character of this commerce. See *Local 167* v. *United States,* 291 U. S. 293; *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1; *National Labor Relations Board* v. *Fainblatt,* 306 U. S. 601; *Currin* v. *Wallace,* 306 U. S. 1; *Mulford* v. *Smith,* 307 U. S. 38; *United States* v. *Rock Royal Co-op.,* 307 U. S. 533.

The indictment alleges that the acts of the defendants in fact had the effect of restraining interstate commerce in these commodities (R. 10–11).[1] These allegations, which must be taken as true for the purposes of the demurrers, preclude any argument that the conspiracy in fact has no real effect on the commerce described in the indictment. That defense, if it is to be made at all, must await a trial on the merits.

The indictment supplies no basis for an argument that no substantial amount of commerce was

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[1] Paragraph 34 alleges generally that the defendants have engaged in the conspiracy "with the * * * effect of restraining such commerce in the commodities and materials aforementioned" (R. 11). Paragraph 32 alleges that the

affected by the conspiracy.[2] The language used by this Court in its opinion in *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, is applicable here (p. 484):

> Here the strikers' activities were as closely related to interstate commerce and affected it as substantially as numerous other activities not in themselves interstate commerce which have nevertheless been held to be subject to federal statutes enacted in the exercise of the commerce power.

In any event, the quantity of commerce affected is not controlling: "* * * it is the nature of the restraint and its effect on interstate commerce and not the amount of the commerce which are the tests of violation." *Apex Hosiery Co.* v. *Leader, supra,* at 485.

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defendants boycotted Anheuser-Busch beer and dealers in the beer, "with the intent *and effect* of restraining and stopping the commerce therein" (italics supplied) (R. 10). Paragraphs 33 and 34 allege that there was a "consequent restraint and stoppage of commerce" in building materials intended to be used by Borsari Tank Corporation and L. O. Stocker Company (R. 10–11).

[2] The value of the building which Anheuser-Busch, Inc., was about to construct when prevented by appellees is fixed in the indictment at approximately $500,000. The building materials were to be drawn largely from interstate commerce (R. 4). Similarly, the building which Gaylord had contracted to erect for Stocker was valued at $70,000 and materials for this likewise were to be shipped in interstate commerce into Missouri (R. 4).

The indictment does not allege the value of the commodities which Anheuser-Busch, Inc., shipped into Missouri for use in brewing beer or the value of the beer shipped out of

It was error for the court below to conclude that the defendants had not violated the Sherman Act because their intent or motive was primarily local in character. The indictment charges that the defendants intended to restrain interstate commerce. It alleges that they called a strike and attempted to instigate a "sympathy" strike against Anheuser-Busch and caused the picketing of the premises of that company and of Gaylord Container Corporation (R. 10)

> with intent to shut down the brewery and manufacturing plant of Anheuser-Busch, Inc., to hinder and prevent the passage of persons and property to and from said premises, and thus to restrain and stop the

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the State. Public and official records of the State of Missouri (cf. *Arizona* v. *California*, 283 U. S. 423, 453) show that the amount of beer shipped in interstate commerce was substantial. The amount of out-of-state sales is contained in the monthly public report filed by Anheuser-Busch with the Missouri State Liquor Supervisor, Jefferson City, Missouri. This report is a matter of public record. Taking the figures for the slackest month of the year, December, the following out-of-state sales are shown for 1939:

	5% Beer Shipped Out of State	3.2% Beer Shipped Out of State	Totals
Bbls	8,742	235	8,707
½ Bbls	117,872	10,10[illegible]	127,977
¼ Bbls	14,476	1,849	16,325
Cases 24/12-oz. Bottles	919,454	55,750	975,204
Cases 12/24-oz. Bottles	10,300	2,305	12,605

> commerce of Anheuser-Busch, Inc., described in paragraphs 12 and 13 hereof, and to restrain the commerce of Gaylord Container Corporation, described in paragraph 16 hereof.

It is also alleged that the refusal of the defendants to allow union members to work for Borsari Tank Corporation in constructing a tank building for Anheuser-Busch was with the intent of restraining the interstate commerce of Anheuser-Busch in beer and ice-cream cabinets (R. 10–11). These allegations plainly charge an intent to prevent Anheuser-Busch from carrying on any interstate commerce whatsoever. Any doubt as to the defendants' intent is removed by the allegation that they carried on a nation-wide boycott of Anheuser-Busch beer and of dealers in that beer for the purpose of restraining commerce in that beer (R. 10).

Moreover, even if the indictment lacked these allegations as to intent and contained nothing more than a description of the defendants' activities and of their effect, the decision below would be erroneous. The attempt to shut down the plant of Anheuser-Busch and to bar that company from the interstate market by calling a strike, instigating sympathy strikes, picketing the premises, and conducting a nation-wide boycott of Anheuser-Busch beer and of dealers in that beer, was an effort to stop a business which was interstate in all of its aspects (R. 2–3, 10). If the attempt were success-

ful, its necessary result would be to stop the movement of commodities in interstate commerce.

In like manner, picketing the plant of Gaylord Container Corporation was an attempt to interfere with an interstate business. The refusal of defendants to allow members of the carpenters' union to work for Borsari Tank Corporation and for L. O. Stocker Company is alleged to have been made "with knowledge and willful disregard of the consequent * * * stoppage" of shipment in interstate commerce of building materials for two buildings, the total cost of which was to be in excess of $500,000 (R. 11).

All of these acts were conscious and deliberate. If successful, their inevitable result would be to obstruct interstate commerce. This being so, it is immaterial that the ultimate motive for the acts was not related directly to interstate commerce. The defendants "must be taken to have intended the natural and probable consequences of their acts." *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 485–486; cf. *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *United States* v. *Brims,* 272 U. S. 549; *Local 167* v. *United States,* 291 U. S. 293; *United States* v. *Painters District Council No. 14,* 44 F. (2d) 58 (N. D. Ill.), affirmed, 284 U. S. 582.

Certainly if the competitors of Anheuser-Busch had combined to prevent it from shipping raw ma-

terials and beer in interstate commerce, to instigate strikes in its plant, and to boycott persons who had dealings with Anheuser-Busch, their activities could not have been described as affecting interstate commerce "only incidentally and indirectly." The fact that the defendants are officers of a labor union and not competitors is immaterial; for the purpose of determining whether interstate commerce has been directly and intentionally restrained the test is the same in both cases.

III

THE INDICTMENT CHARGES THE KIND OF RESTRAINT WHICH IS ILLEGAL UNDER THE SHERMAN ACT

We have shown that the indictment here charges a direct and intentional restraint of interstate commerce. In *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, however, this Court held that all restraints on the interstate movement of goods are not illegal under the Sherman Act and that the prohibitions of the statute extend only to those restraints which in one way or another suppress competition in the interstate market. The question remains, therefore, whether the direct and intentional restraint charged by the indictment here is the kind of restraint which the Sherman Act forbids.

The opinion in the *Apex* case discusses at length the purpose of the Sherman Act and the nature of the restraints which it was intended to prevent. This discussion is cast in somewhat general terms and must necessarily be read against the back-

ground of the particular facts then before the Court. The decision was, of course, not intended to, and it did not, establish rules governing all cases involving the application of the Sherman Act to the activities of labor unions. Nevertheless, the opinion makes it possible to segregate the cases of clear illegality from the cases of apparent immunity, and thus to delimit the area within whose boundaries the application of the law is still uncertain.

On the one hand lies the conventional combination of traders to suppress competition by fixing prices, restricting production, or otherwise controlling the market; these activities fall squarely within the scope of the Act. And if a labor organization becomes a party to a combination of this kind, it enjoys no immunity from prosecution. *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 501; *United States* v. *Brims,* 272 U. S. 549. At the other extreme, a labor organization, in the course of a labor dispute with an employer over such issues as collective bargaining, wages, hours or conditions of labor, can, without violating the Sherman Act, conduct a local strike which closes a factory, even though this prevents the shipment of goods in interstate commerce. *Apex Hosiery Co.* v. *Leader, supra.*

No contention is made in this case that the indictment charges a conventional combination by commercial competitors to fix prices or to control production. On the other hand, the conspiracy which is charged is, in many material respects, so

radically different from the conspiracy involved in the *Apex* case that the *Apex* decision cannot be deemed controlling in the present situation.

A. THE DISTINCTIONS IN FACT BETWEEN THIS CASE AND THE APEX CASE

In the *Apex* case a labor union committed acts conceded to be unlawful under state law (forcible possession of a plant by a sit-down strike) in order to coerce the employer to establish a closed shop. No organizations were involved or brought into the dispute except the employer and the labor union. The union was demanding that the employer assist it by excluding nonunion individuals from his employment, but there were no boycotts or sympathetic strikes against those who dealt with the employer to prevent them from contracting with him or from buying his goods if he did not establish a closed shop. The only effect on consumers in interstate commerce was a slight diminution of the supply because of the temporary closing of the factory. There was no attempt to fix prices—a power held by this Court to be so inherently dangerous that its illegality does not depend on the extent of its immediate effect on the market as a whole. Nonunion laborers were affected, but to no greater extent than always happens when a union closes a plant by a strike.

The present situation is different in at least three major respects. In the first place, there is here no mere local dispute between an employer and his

employees, and the acts charged to the defendants are not merely local activities conducted in a single factory and subject to the supervision and control of the local authorities. The indictment in this case charges rather that a restraint of trade has been imposed as a result of a jurisdictional dispute between two national unions, that this dispute has resulted in many different strikes at many different times and places, and that "such strikes and disputes have imposed, and are imposing a direct, unreasonable burden and restraint upon trade and commerce among the several states" (R. 5). It further charges that the Brotherhood of Carpenters sought to force Anheuser-Busch to take its side in this dispute and, when Anheuser-Busch refused, that it engaged in a deliberate campaign on a national scale to drive Anheuser-Busch from the interstate market. One weapon of this campaign was a boycott carried on throughout the United States and directed against beer brewed and sold by Anheuser-Busch and against those who dealt in that beer. The activities of the Brotherhood of Carpenters in its campaign to drive Anheuser-Busch from the interstate market were not subject to the control of local authorities, as were the activities of the union involved in the *Apex* case. Consequently, if those activities be held not subject to federal control under the Sherman Act, a no-man's land will have been created in which both state and national authorities are powerless to prevent a stoppage of interstate trade.

In the second place, the national campaign waged by defendants against Anheuser-Busch did not have as its objective the protection and advancement of the rights of labor, such as collective bargaining, wages, hours or working conditions; the objective was rather to win by force a jurisdictional dispute with another union, the dispute being of nation-wide scope and having a direct effect on nation-wide commerce. Anheuser-Busch had bargained collectively with both the Brotherhood of Carpenters and the Machinists' Union and for several years had had contracts with both unions (R. 6–7). There was no controversy between Anheuser-Busch and the members of the Brotherhood of Carpenters in its employ as to wages, hours, or working conditions (R. 7). The defendants attempted to destroy the interstate business of Anheuser-Busch, and to restrain the interstate trade of the other companies, who were all innocent of any interest in the jurisdictional dispute, because they hoped by these methods to compel Anheuser-Busch to become a partisan in the jurisdictional dispute and thus to impair or to destroy the collective bargaining power of the machinists. The holding in the *Apex* case that a union may, without federal interference, stop production in a local factory in order to achieve union recognition is not authority for a similar holding where the objective of the union is to win by force a nation-wide contest, not with the employer, but

with another union, and to deprive the members of that other union of work.

In the third place, the objective of the union in this case was sought to be achieved not, as in the *Apex* case, by interfering with the business of the other party to the dispute, but by stopping interstate trade to or by four companies, with only one of which it had any relation and against none of which it had any real grievance. The defendants' quarrel here is with the Machinists' Union; it is not a quarrel which Anheuser-Busch provoked or in which Anheuser-Busch has any financial interest. Yet the defendants sought to deprive Anheuser-Busch of access to the interstate market, simply to compel it to side with the Brotherhood of Carpenters. Innocent bystanders were brought into the fight by an attack directed against the dealers who sold Anheuser-Busch beer. The interstate commerce of local concerns who had no interest in the controversy was also attacked. The Borsari Tank Corporation, against whom the defendants had no grievance, found itself deprived of the opportunity to complete a building contract, the materials for which were to have been bought and shipped in interstate commerce. The Gaylord Container Company, which manufactured paper boxes for interstate shipment, found its interstate trade restrained by picketing and its building operations hindered and delayed in order to compel it to break off normal commercial relations with Anheuser-Busch.

The purpose of the defendants in restraining the interstate commerce of these various businesses and firms was to compel them to become partisans in the fight between the Brotherhood of Carpenters and the Machinists' Union. They wanted Anheuser-Busch to enlist on their side at the risk of suits for breach of contract, strikes and boycotts on the part of the machinists. The carpenters put pressure on the Borsari Tank Company in order to get it to put pressure on Anheuser-Busch to enter the war on their side. They tried to coerce the Gaylord Company to stop its business relations with Anheuser-Busch so that this company would also put pressure on Anheuser-Busch to enter the fight on the side of the carpenters. They hindered L. O. Stocker Company, which was building an office building for the Gaylord Company, in order to induce the Stocker Company to induce the Gaylord Company to induce Anheuser-Busch to help the carpenters. And, of course, if these pressures are legal, then it would have been equally legal for the Machinists' Union to enlist or compel a different set of people to put pressure on Anheuser-Busch so that they would line up against the carpenters. Therefore, if Anheuser-Busch were forced to give in to the carpenters, their war with the machinists would just be beginning, with no end in sight except the collapse of the employer or one of the two unions.

This aspect of the defendants' activities indicates an intent and purpose to interfere with inter-

state commerce on a far broader scale than the closing of one local plant; it raises a question quite distinct from that in the *Apex* case, where all the activities of the union were directed to stopping the operation of the employer's factory alone. This Court has always regarded interference with the commerce of persons not dealing directly with the defendants and not engaged in any controversy with them, as indicative of the kind of restraint which the Sherman Act forbids. *Loewe* v. *Lawlor*, 208 U. S. 274, 294–295; *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600. In the latter case this Court said (pp. 612–613):

> In other words, the trade of the wholesaler with strangers was directly affected, not because of any supposed wrong which he had done to them, but because of the grievance of a member of one of the associations, who had reported a wrong to himself, which grievance when brought to the attention of others it was hoped would deter them from dealing with the offending party. This practice takes the case out of those normal and usual agreements in aid of trade and commerce which may be found not to be within the act and puts it within the prohibited class of undue and unreasonable restraints * * *.

Because of the material distinctions between the present case and the *Apex* case, we believe it clear that the question here presented is far from foreclosed by the *Apex* decision. To the contrary, the

situation revealed by the indictment seems squarely covered by the earlier decisions of this Court in *Loewe* v. *Lawlor*, 208 U. S. 274; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, and *Bedford Cut Stone Co.* v. *Journeyman Stone Cutters' Ass'n*, 274 U. S. 37, which were specifically distinguished in the *Apex* opinion. For reasons more fully developed below (pp. 45–47), we believe that the decision below must be reversed unless it be held that these other decisions no longer have vitality.

B. THE RATIONALE OF THE APEX OPINION DOES NOT SUPPORT THE DECISION BELOW

It is true that the opinion in the *Apex* case does contain language which, read apart from the background of the particular facts which the Court was considering, would militate against our position in this case. The stress of the opinion was on the principle that a restraint, to come within the Sherman Act, must be one which restrains "commerical competition in the marketing of goods or services" (p. 495). The precise content of this principle, however, and its application to the present case can properly be understood only by reference to the particular situation which the Court was considering in the *Apex* case.

There, as we have pointed out, the defendants had taken possession of the plaintiff's factory and, by so doing, had prevented the shipment of goods in interstate commerce. In one sense these acts suppressed competition; they certainly impaired

the power of the Apex Hosiery Company to compete in the interstate market. But despite this fact, the Court held that the restraint was not one upon "commercial competition", and, therefore, was not within the scope of the Sherman Act. Literally, this decision might be interpreted to mean that the plaintiff had not proved that the *effect* of the conspiracy was such a restraint on trade or commerce as to bring it within the condemnation of the law. But that this interpretation could not have been intended is conclusively shown if we assume a situation in which a restraint, having precisely the same effect, was imposed by a competitor of the Apex Company in order to drive Apex from the market; in such a situation, the illegality of the restraint could not be questioned.

It is apparent, therefore, that it was not the *effect* of the restraint upon commercial competition which was determinative in the *Apex* case. The determinative factors seem rather to have been the local nature of the activities by which that effect was achieved (see pp. 490–491, 505–507, 508–509, 512–513), and the local and noncommercial objectives sought to be attained by the conspiracy (see pp. 501–504, 508–509, 512). Thus, although the defendants there had interfered intentionally with interstate commerce, they had not deliberately gone into the interstate market in an attempt to close that market to the goods of the Apex Company. Moreover, their acts were local in the sense that they were directed solely against the factory

of the Apex Company; they did not attempt to interfere with the interstate commerce of third persons in order to compel them to break off normal commercial relations with the company. Further, the defendants' acts were both local and noncommercial in purpose. Their objective was to unionize a local factory, and they made no attempt to achieve that purpose by an interference with commerce on a national scale or by interference with the commerce of third persons.

The situation here, as we have pointed out, is very different. Far from confining their conspiracy to local activities, defendants attempted by a nation-wide boycott to exclude the beer of Anheuser-Busch from the interstate market. By the same means they attempted to interfere with the normal commercial relationships of dealers who handle that beer. They likewise attempted to interfere with the interstate commerce of two companies which had no connection whatsoever with the jurisdictional dispute, but which did have contractual relations with Anheuser-Busch, and with the interstate commerce of a third company which had done nothing except to agree to erect a building on land leased by another person from Anheuser-Busch. The effect of all these activities was to impair the power of Anheuser-Busch to compete in the interstate market. The obvious purpose was to apply economic pressure to Anheuser-Busch by depriving it of the power to meet the competition

of other companies engaged in the same line of business.

The opinion in the *Apex* case recognizes that this kind of restraint, because it actually and potentially interferes with competitors in every direction, is within the prohibitions of the Sherman Act. The test laid down in that case, as we have shown, is whether the restraint is "upon commercial competition in the marketing of goods or services" (p. 495). The mere closing of a factory is not enough to bring the case within the test. But if the restraints go beyond that, the application of the Sherman Act is clear. Relevant illustrations, taken from the opinion, of restraints which have been held as coming within the Act show how many of the restraints which the Court considers prohibited by the Act are included in the facts of this case. We list a few mentioned in the opinion: (1) "restrictions on shipments * * * to restrain commercial competition in some substantial way" (p. 497); (2) "restraints * * * having those effects * * * on purchasers and consumers of goods or services which were characteristic of restraints deemed illegal at common law" (p. 498); (3) "undue limitation on competitive conditions" (p. 499); (4) "a secondary boycott by which, through threats to the manufacturer's wholesale customers and their customers, the Union sought to compel or induce them not to deal in the product of the

complainants" (p. 505); (5) "a 'black list,' intended to persuade retailers not to deal with specified wholesalers" (p. 505); (6) "the refusal of the union to work on a product in the hands of the purchaser" (p. 505); (7) "discriminate between its would-be purchasers" (p. 511); (8) "The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices *or otherwise control the market to the detriment of purchasers or consumers of goods and services,* all of which had come to be regarded as a special form of public injury" (italics supplied) (p. 493); (9) "Restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition" (pp. 500–501).

These excerpts from the opinion show the care which the court took to avoid even the inference that a conspiracy by a labor union which directly interfered with the interstate commercial relations of persons not parties to a labor dispute escaped the prohibitions of the Sherman Act. And there was another inference which the court was careful to avoid—the inference that in the case of power which carried grave *potential* danger to the commercial relations of others, there must be shown an

immediate and direct effect on the market. Price-fixing between the employer and the union was not involved in the *Apex* case. Nevertheless, the court took pains to point out that use of this power was illegal under the Act even in the absence of proof of immediate and direct injury to the commercial competitive relations of those who dealt in the product. The reason was the grave *potential* danger of the power to combine to fix prices. Taking *potential* danger as the test, the record shows that no power which can be exercised by a labor union more inevitably leads to the involvement of innocent bystanders than jurisdictional strikes. Indeed, there can be no jurisdictional strike without direct injury to at least one innocent bystander who is not a party to the dispute, *i. e.*, the employer caught between the two rival unions. In this case, the direct injury was spreading to others besides the employer, not only locally, but nationally. And the same dangerous potentiality exists in the case of every jurisdictional strike.

In *Loewe* v. *Lawlor,* 208 U. S. 274; *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443; and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Ass'n,* 274 U. S. 37, this Court held that activities similar in all important respects to the activities of the defendants here, restrained commerce within the meaning of the Sherman Act. In the first two of these cases, there were nation-wide boycotts of commodities and of dealers in commodities.

In the third case, a union attempted to close the channels of interstate commerce to the products of an employer by refusing to work upon those products after they came into the hands of purchasers. The similarity between these activities and the nationwide boycott of beer and of dealers in beer, and the interference with the interstate commerce of persons who had commercial relations with Anheuser-Busch, in this case, is too obvious to require elaboration.[3]

Nothing in the opinion of the Court in the *Apex* case suggests that these three decisions, insofar as they hold that the activities there involved imposed a restraint upon commerce within the meaning of the Sherman Act, are not good law today. The Court in speaking of these cases said (p. 506):

> It will be observed that in each of these cases where the Act was held applicable to

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[3] In *Loewe* v. *Lawlor*, 208 U. S. 274, the union engaged in a boycott of a manufacturer's product similar in all respects to the boycott of beer charged in the indictment here. The same kind of boycott was held to be a restraint of trade in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443. In both cases the boycott was directed against the product of the manufacturer with whom the union was in controversy and was designed to prevent its distribution in the interstate market. In *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Ass'n*, 274 U. S. 37, the restraint condemned was achieved not by a boycott of the product but by a refusal to work on the product after it had been produced and sold. This is comparable to the refusal of the defendants here to permit members of the Brotherhood of Carpenters to work for corporations which had contractual relations with Anheuser-Busch, Inc.

> labor unions, the activities affecting interstate commerce were directed at control of the market and were so widespread as substantially to affect it. There was thus a suppression of competition in the market by methods which were deemed analogous to those found to be violations in the non-labor cases.

Unless this Court is now prepared to overrule its earlier decisions, it seems apparent that the decision below must be reversed.

C. A COMBINATION TO EXCLUDE PERSONS FROM THE MARKET IS ILLEGAL.

But even if this Court should deem that those earlier decisions no longer have vitality, it would still not follow that the indictment here charged a restraint which is beyond the scope of the Sherman Act. As we have stated, the purpose and intent of the defendants' activities here were to exclude Anheuser-Busch from the interstate market. The exclusion of a trader from the market, or the erection of arbitrary barriers to free access to the market, has long been recognized both under the Sherman Act and at the common law as a restraint of trade.

At the common law a contract or combination which denied to an individual fair and free access to the market was one of the classic forms of restraint of trade, and this was so regardless of whether the contract or combination attempted at the same time to fix prices or to restrict produc-

tion.[4] In the common law cases this doctrine often appeared in the form of declarations against artificial restrictions which prevented men from pursuing their lawful callings. See *Darcy* v. *Allein*, 11 Coke 84b; *The Case of the Tailors of Ipswich*, 11 Coke 53a; *Colgate* v. *Bacheler*, Cro. Eliza. 872; *Mitchel* v. *Reynolds*, 1 P. Wms. 181 (1711).[5] It is apparent from these declarations that the evil of denying access to the market was regarded as distinct from, although perhaps not entirely unrelated to, the evil of artificially controlled prices and production.[6]

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[4] That the common law meaning of the words "restraint of trade" may be used as a guide in construing the Sherman Act is shown by *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, where this Court, speaking of the enactment of the Sherman Act, said (p. 498):

"* * * the legislators found ready at their hand the common law concept of illegal restraints of trade or commerce. In enacting the Sherman law they took over that concept by condemning such restraints wherever they occur in or affect commerce between the states."

[5] For example, in *The Case of the Tailors of Ipswich*, *supra*, at 53b, the court said: "* * * at common law no men could be prohibited from working in any lawful trade, for the law abhors idleness, the mother of all evil * * * and the common law abhors all monopolies which prohibit any from working in any lawful trade, * * *."

[6] This is indicated by the fact that in the common law cases the courts, in explaining the basis for the rule against restraints of trade, usually classify the evil of exclusion from the market and the evil of artificially raised prices as separate and distinct grounds. See, for example, *Darcy* v. *Allein*, *supra*; *Mitchel* v. *Reynolds*, 1 P. Wms. 181 (1711),

In this connection it should be noted that the earliest common law rules as to restraint of trade were developed in relation to contracts by which a trader voluntarily surrendered the right to access to the market. See for example *Anon.*, Moore (K. B.) 115, 72 Eng. Repr. 477; *Anon.*, 2 Leo. 210, 74 Eng. Repr. 485. The limitations upon contracts of this kind were clear manifestations of the reluctance of the common law to sanction the placing of artificial barriers between the traders or the worker and the market. It is true that as time went on the common law rules against these restraints were relaxed so as to permit their imposition if they were not unreasonable, but this relaxation did not proceed from any admission that the restrictions did not restrain trade. It provided, rather, a limited justi-

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particularly at page 190; and *Alger* v. *Thacher*, 19 Pick. 51 (1831). Compare Judge Taft's summary of the early law in *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271 (C. C. A. 6th), which reads in part as follows (p. 279):

"From early times it was the policy of Englishmen to encourage trade in England, and to discourage those voluntary restraints which tradesmen were often induced to impose on themselves by contract. Courts recognized this public policy by refusing to enforce stipulations of this character. The objections to such restraints were mainly two. One was that by such contracts a man disabled himself from earning a livelihood with the risk of becoming a public charge, and deprived the community of the benefit of his labor. The other was that such restraints tended to give to the covenantee, the beneficiary of such restraints, a monopoly of the trade, from which he had thus excluded one competitor, and by the same means might exclude others."

fication for an admitted restraint.[7] It is apparent from the very nature of these rules that their application did not depend upon the existence of a contract to fix prices or to control production. The evil prohibited was the erection of arbitrary and unreasonable restrictions upon access to the market. It is also apparent that the common law regarded these restrictions as illegal irrespective of whether they resulted from agreements between competitors. The evil condemned was arbitrary interference with the pursuit of a lawful calling; the source of and the motive for the interference were both immaterial.[8]

That this common-law doctrine still possesses vitality is shown by a more recent English decision in a somewhat different field. In *Pratt* v. *British Medical Association* [1919] 1 K. B. 244, the defendant medical association had established certain

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[7] In this connection it is significant to note that in *Mitchel* v. *Reynolds*, 1 P. Wms. 181, 191–192, the court held that the onus of proof that a restriction of this kind is reasonable rests upon the party who seeks to enforce it.

[8] This is the clear inference from the statements as to the basis of the rules contained in the common law cases (see note 6, p. 48 *supra*). It should be remembered that at the time when these rules developed the conception of competition as a regulating force in the market did not occupy the central position in economic thought which it subsequently assumed. The moral right of each man to exercise the privileges incident to his status and the social desirability of permitting him to do so, rather than an interest in commercial competition, appears to have been the starting point for the doctrine.

"rules of ethics," designed to obstruct so-called "contract practice." The action was in tort for damages. In holding for the plaintiff, the court said (p. 274):

> The public interests must be regarded conjointly with the interests of individuals when restraint of trade is in question. * * * Upon considering the rules in question I have arrived at the conclusion that they are *in restraint of trade,* and are void on the ground of public policy. They gravely, and in my view unnecessarily, *interfere with the freedom of medical men in the pursuit of their calling,* and they are, I think, *injurious to the interests of the community at large.* [Italics supplied.] [9]

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[9] It is interesting to compare the recent decision by the Court of Appeals for the District of Columbia in *United States* v. *American Medical Ass'n*, 110 F. (2d) 703 (1940), certiorari denied, 310 U. S. 644. The court applied common-law principles in holding a similar combination to be in restraint of trade within the Sherman Act. The court said (p. 713):

"It certainly cannot be doubted that Congress intended to exert its full power, in the public interest, to set free from unreasonable obstruction the exercise of those rights and privileges which are a part of our constitutional inheritance, and these include immunity from compulsory work at the will of another, *the right to choose an occupation, the right to engage in any lawful calling for which one has the requisite capacity, skill, material, or capital, and thereafter the free enjoyment of the fruits of one's labors.* Congress undoubtedly legislated on the common-law principle that every person has individually, and that the public has collectively, a right to require the course of all legitimate occupations in the District of Columbia to be free from unreasonable ob-

The debates in Congress preceding the passage of the Sherman Act contain references to restraints of trade which deny access to the market and thus prevent men from following their lawful callings, as well as to combinations to fix prices and to control production. For example, in introducing the bill Senator Sherman made the following statement (21 Cong. Rec. 2457):

> It is the right of every man to work, labor, and produce in any lawful vocation and to transport his production on equal terms and conditions and under like circumstances. This is industrial liberty and lies at the foundations of the equality of all rights and privileges.

It is true that the greater number of the decisions of this Court interpreting and applying the Sherman Act have involved arrangements designed to limit production or to fix prices. Nevertheless, in a number of instances, not involving labor unions, this Court has struck down restraints not because they controlled prices or production but because they operated to destroy free access to the market. Striking examples of decisions of this

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structions, and likewise in recognition of the fact that all trades, businesses and professions, which prevent idleness and exercise men in labor and employment for the benefit of themselves and their families and for the increase of their substance, are desirable in the public good and any undue restraint upon them is wrong and is immediate and unreasonable and, therefore, within the purview of the Sherman Act." (Italics supplied.)

kind are *Paramount Famous Corp.* v. *United States,* 282 U. S. 30; and *United States* v. *First National Pictures, Inc.,* 282 U. S. 44. In those cases the Court held illegal certain contractual arrangements whereby producers of practically all of the motion picture films produced in the United States agreed among themselves to deal with exhibitors of those films only upon certain specified terms and conditions. There was no showing that the arrangements served to fix prices or to restrict production. Nevertheless, this Court held that the agreements were illegal because they denied the exhibitors access to the market unless they complied with the terms and conditions specified by the defendants.

The decision in *Eastern States Lumber Ass'n* v. *United States,* 234 U. S. 600, illustrates the same principle. There retailers of lumber combined to prevent wholesalers from selling direct to consumers. To achieve this purpose the defendants circulated "blacklists" of wholesalers who sold direct to consumers. There was no showing that the defendants had agreed among themselves as to prices, or that wholesalers sold to consumers at prices lower than those charged by the defendants. Nevertheless, this Court held that this was an illegal restraint of trade because it denied the wholesalers access to the retail market.

That restrictions upon access to the market are as much restraints of trade as are agreements

among competitors to fix prices or to limit production was also recognized by implication in the *Apex* decision. For example, in speaking of the purpose of the Sherman Act, the Court said (p. 493):

> The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices *or otherwise control the market to the detriment of purchasers or consumers of goods and services,* all of which had come to be regarded as a special form of public injury. [Italics supplied.]

And again the Court said (pp. 500–501):

> Restraints on competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have an effect upon prices in the market *or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition.* [Italics supplied.]

It is plain from this language that the Court did not confine its condemnation to agreements to fix prices or to control production or even to agreements made between competitors. Each of these statements recognizes that there may be other restraints equally within the scope of the statute. Certainly practices and activities which deny traders access to the market and thus impair their power to compete are included because they tend

to deprive purchasers and consumers of the advantages which are assumed to follow from free competition.

The defendants may contend that they have not restrained trade either because their purpose has not been to suppress competition or because the persons whose trade has been restrained are not competitors of the defendants. There is no merit in either of these arguments. Admittedly the activities of the defendants here were not prompted by a desire to escape the consequences of commercial competition in the usual sense. This circumstance should not serve to obscure the fact, equally true, that they intended to close the interstate market to Anheuser-Busch and to prevent others from dealing with it, and thus to impair or destroy its power to compete in the interstate market. Admitting, however, that the ultimate objective of the defendants here was to prevail in the jurisdictional dispute with the Machinists' Union, it does not follow that their activities did not restrain trade. If activities in fact affect the interstate market and suppress competition, they may fall within the scope of the statute even though their ultimate purpose may lie in other fields. This principle is recognized in the *Apex* opinion, where, in speaking of the decisions in *Loewe* v. *Lawlor,* 208 U. S. 274; *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443; and *Bedford Cut Stone Co.* v. *Journeymen*

Stone Cutters Ass'n, 274 U. S. 37, this Court said (pp. 506–507):

> That the objective of the restraint in the boycott cases was the strengthening of the bargaining position of the union and not the elimination of business competition—which was the end in the non-labor cases—was thought to be immaterial because the Court viewed the restraint itself, in contrast to the interference with shipments caused by a local factory strike, to be of a kind regarded as offensive at common law because of its effect in curtailing a free market and it was held to offend against the Sherman Act because it effected and was aimed at suppression of competition with union-made goods in the interstate market.

The same principle is illustrated by an earlier decision of this Court in a case somewhat more analogous to the case at bar: *United States* v. *Painters' District Council No. 14*, 44 F. (2d) 58 (N. D. Ill.) affirmed *per curiam* after a full hearing, 284 U. S. 582. In that case a painters' union in Chicago conspired to prevent the use or installation in Chicago of cabinet work painted in factories located in states other than Illinois. Some of the cabinet work which the defendants intended to exclude from the Chicago market was painted in Kentucky by members of another union. The purpose of the restraint was to obtain for the defendants the exclusive right to paint all cabinets installed in Chicago, a purpose comparable in many

ways to the purpose of the defendants here to obtain for the carpenters' union the exclusive right to install and repair machinery. The district court held that this restraint violated the Sherman Act and that decision was affirmed by this Court. No issues as to price fixing or restrictions upon production were involved; the restraint fell within the scope of the Act merely because it denied free access to the Chicago market to products painted outside of the State of Illinois, and thus deprived consumers and purchasers of the benefits which normally flow from the maintenance of a free market. Thus the restriction had the effect of suppressing competition in the interstate market even though the defendants' purpose may not have been immediately directed to this end. The analogy to the facts at bar is close and persuasive.

It is also immaterial that the defendants were not commercial competitors of Anheuser-Busch or of the other companies whose trade they restrained, or (except in a very loose sense) of the Machinists' Union with whom they were quarreling. It is perfectly clear from the decisions of this Court that a restraint may fall within the prohibited area even though it is not imposed upon the commerce of a competitor. See the discussion of *Loewe* v. *Lawler*, 208 U. S. 274; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Ass'n*, 274 U. S. 37, contained in the opinion in *Apex Hosiery Co.* v. *Leader*

(see p. 56, *supra*). In the *Second Coronado Case*, 268 U. S. 295, the restraint condemned did not operate against commerce carried on by commercial competitors of the defendants. An example from another field is found in *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436, where this Court struck down a restraint imposed by the defendant upon jobbers of gasoline who were not competitors of the defendant in any sense.

IV

THE INDICTMENT CHARGES AN UNREASONABLE RESTRAINT OF TRADE

There remains the question whether the restraint charged in the indictment may be justified under the "rule of reason" enunciated in *Standard Oil Co.* v. *United States*, 221 U. S. 1. A cursory examination of the character and consequences of jurisdictional strikes makes clear the answer.

It is generally admitted that the right of labor to unionize a plant in order to maintain collective bargaining is so intimately connected with the attainment of labor objectives that the fact that nonunion laborers are directly injured, or the commerce of the employer interrupted, does not make a strike to achieve unionization, such as that involved in the *Apex* case, an unreasonable restraint of trade. But such an objective is very different from an intent, not to unionize, but to deprive members of another union of their employment.

It is difficult to imagine any form of labor warfare so opposed to the public interest and to the interest of organized labor as the jurisdictional strike which stops the commerce of an employer who is trying to be fair to organized labor. William A. Green, President of the American Federation of Labor, on September 28 of last year, attacked jurisdictional strikes as representing "the rule of force and might."[10] Other intelligent labor leaders have similarly condemned this type of labor warfare.[11] The reasons are obvious, whether looked at from the standpoint of the employer or of the union. An employer who finds himself the victim of such a strike is powerless to remedy the situation. There is no concession he can make which will stop the attack on his business. Similarly, the union whose relations with the employer the other union seeks to disrupt cannot rely on its satisfactory service or its superior craftsmanship to maintain its position; it has no weapon, other than ruthless economic warfare, to defend itself against the aggressive tactics of those who would destroy it.

Certainly the cause of intelligent collective bargaining is not served by union expansion through

[10] See New York Times, September 29, 1939, p. 46.

[11] See statement of John P. Coyne, President of the Building and Construction Trades Department of the American Federation of Labor, in the New York Times for August 12, 1939, page 1. See also the statement of Thomas A. Murray, President of the New York City Building and Construction Trades Council, in the New York Times for August 17, 1939, page 23.

the type of coercive tactics charged to the defendants here. American policy is to encourage the growth of unions. If these unions grow with the efficiency and ability of their leaders in gaining advantages for labor, good union leadership may be expected. But if a union is permitted to expand through the mere brutal use of power against neutral employers, there will be a premium on ruthless and coercive leadership. Consequently, it is essential to the growth of an intelligent labor movement that competing unions should not succeed or fail solely with reference to their ability to bring pressure against each other.

If force is once established as the recognized mode of competition between labor organizations, and the power of such an organization is permitted to be expanded by stopping the interstate business of every employer who deals with another union, there is no possible help for forward-looking labor leaders who desire to clean their own houses. Of course, disputes will arise between industrial unions and craft unions, and between craft unions themselves (as in this case), as to which will be permitted to do a certain type of work. In the same way, there will be disputes between the subsidiaries of the United States Steel Corporation as to which one will serve a particular customer. But it is difficult to conceive how the objectives of the United States Steel Corporation would be furthered by allowing the Illinois Steel Company to

destroy the business of any customer who dealt with Carnegie Illinois Steel Company. Similarly, it is difficult to conceive how the objectives of intelligent unionism would be furthered by allowing one union to destroy the commerce of any employer who deals with a competing union. Such a power to restrain trade is one which no government can safely put in the hands of any private group.

At the beginning of the road of restraints of trade is competition through force and coercion instead of through efficiency and service. At the end of that road is the monopoly that results after those most skilled in the use of force have conquered those who were mistakenly trying to gain a place for themselves by efficiency and service. If the Sherman Act is, as this Court has said, a charter of freedom (see *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 359), it must include within its prohibitions the destruction of one labor organization by another through force and coercion at the expense of innocent bystanders and the tying up of the business of the public at large.

V

THE COURT BELOW ERRED IN HOLDING THAT THE SHERMAN ACT DID NOT APPLY TO THE ACTS CHARGED IN THE INDICTMENT BECAUSE OF THE PROVISIONS OF THE NORRIS-LA GUARDIA ACT

One more point must be noted. The court below held that the allegations of the indictment relating

to the nation-wide boycott of Anheuser-Busch beer and of dealers in that beer "set forth an attempt to interfere with the interstate commerce in that product." The court concluded, however, that the "means" used to conduct the boycott were not unlawful,[12] and that "labor unions engaging in jurisdictional strikes are immune from suit in the federal courts, so long as lawful means are employed, under the provisions of the Norris-LaGuardia Act of 1932, enlarging the scope of section 20 of the Clayton Act" (R. 20).

The view that the Norris-LaGuardia Act (c. 90, 47 Stat. 70, 29 U. S. C., § 101 *et seq.*) modified or amended Section 1 of the Sherman Act so as to make lawful thereunder activities which might otherwise be illegal is plainly erroneous. That statute does nothing more than limit the equity powers of the federal courts. Its purpose and scope are shown by its first section, which provides (47 Stat. 70, 29 U. S. C. § 101):

> No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act;

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[12] In holding that the "means" employed were lawful, the court below apparently meant that the boycott was not accompanied by acts of physical violence or by threats of violence. This fact is immaterial. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 513.

> nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

The purpose thus declared is carried out by the other provisions of the Act which prescribe terms and conditions to be followed by the federal courts in issuing and enforcing injunctions in cases arising out of labor disputes. Nothing in the Act purports to change the existing substantive rules of criminal and civil law as they apply to the activities of labor organizations.[13] This conclusion as to the purpose of the Act is confirmed by its legislative history. The reports of the congressional committees and the debates on the floor of Congress show that the Act was directed at nothing more than the equity powers of the federal courts.[14]

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[13] The situation as to the criminal law is too plain to require elaboration. It may be suggested that by reason of its denial of the injunctive remedy the law changes the substantive rights of one who seeks relief in a court of equity. On the other hand, there is much to be said for the view that for the most part the Act simply embodies the sound view as to the equity practice prevailing before its enactment. The only section of the Act which might properly be regarded as impairing substantive rights is Section 3, which outlaws the so-called "yellow dog" contract. It has never been suggested that the Norris-LaGuardia Act modifies in any way Section 7 of the Sherman Act, which confers a civil right to triple damages.

[14] In both the Senate and the House the bill finally enacted was entitled "a bill to define and limit the jurisdiction of courts sitting in equity." For explicit statements as to the

The same reasoning which supports the conclusion that the Norris-La Guardia Act does not expressly amend Section 1 of the Sherman Act closes the door on any possible argument that an amendment is accomplished by inference or implication. Moreover, "It is a cardinal principle of construction that repeals by implication are not favored." *United States* v. *Borden Company,* 308 U. S. 188, 198. In that case it was argued that the Sherman Act had been modified by the passage of the Agricultural Marketing Agreement Act of 1937. This Court rejected the contention, pointing out, among other things, that (p. 199):

> The Sherman Act is a broad enactment prohibiting unreasonable restraints upon interstate commerce, and monopolization or attempts to monopolize, with penal sanctions. The Agricultural Act is a limited statute with specific reference to particular transactions which may be regulated by official action in a prescribed manner.

Similarly here it is obvious that the Norris-La Guardia Act is a limited statute passed with specific reference to the exercise of a particular kind of jurisdiction by the federal courts. It affords

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purpose of the bill see the Senate report at pages 7–8 (S. Rep. No. 163, 72d Cong., 1st Sess.). Similar statements appear in the House report at pages 2–3 (H. Rep. No. 669, 72d Cong., 1st Sess.). If it were necessary to resort to statements made in the debates on the bill, additional support for this conclusion could be supplied. See 75 Cong. Rec. 5467, 5464.

no ground for construing the Sherman Act as inapplicable to the acts charged in the indictment.

CONCLUSION

The decision of the court below should be reversed.

Respectfully submitted.

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NOVEMBER 1940.

APPENDIX

Section 1 of the Sherman Act, as amended, c. 647, 26 Stat. 209, c. 690, 50 Stat. 693, 15 U. S. C. § 1, is as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided,* That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended and supplemented, of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914: *Provided further,* That the preceding proviso shall not make lawful

any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

The Clayton Act, as amended, c. 323, 38 Stat. 730, 15 U. S. C., § 17 and 29 U. S. C. § 52, is as follows:

SEC. 6. The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

* * * * *

SEC. 20. No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between

persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Those provisions of the Norris-La Guardia Act, c. 90, 47 Stat. 70, 29 U. S. C., §§101–115, which might possibly be deemed relevant are as follows:

> SEC. 1. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.
>
> SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in

self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

* * * * *

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrol-

ling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

* * * * *

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be

continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

* * * * *

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

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